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BETWEEN ORTHODOXY AND EXEGESIS: SOME ASPECTS OF ATTITUDES IN THE SHARĪʿA TOWARD FUNERARY ARCHITECTURE

It has long been an accepted notion in Islamic art history that funerary architecture was a rather late development in Muslim building and that it did not come into wide use before the ninth century. K. A. C. Creswell supported this idea by claiming that the Arabs showed no interest in commemorating the dead with built structures both during the *jāhiliyya* and after they had accepted Islam.¹ At most they piled stones up over the dead; more commonly they covered them with earth and left them to oblivion. Creswell argued that the Prophet had discouraged any tendencies toward constructing funerary monuments by prohibiting them from the outset. According to him, this prohibition was observed until the Qubbat al-Sulaibiyya was built in Samarra; it violated the rule of *taswiyat al-qubūr*, or leveling to the ground of all tombs, for the first time.²

In fact, however, Islamic funerary architecture was from the beginning of Islam subject to dispute and opposition. Even if today art historians categorize funerary structures as "religious" buildings,³ that should not detract from the fact that a substantial group of Muslim religious texts, including hadith, commentaries, and pious tracts, regard them as distinctly unreligious, pagan, and anti-Islamic, and one ought not to consider funerary architecture without bearing this in mind. The insistence with which this disapproval was expounded in the collections of the hadith of the third century after the hijra, and later in the high Middle Ages, in opposition to the spreading and flourishing cult of saints that centered on their tombs shows how much those who regarded themselves as guardians of the undiluted Islamic creed resisted the construction of buildings over tombs and rituals at gravesites.

Measures dealing with funerary building, whether instructive or prohibitive, cannot, however, have been inspired only — to go back to Creswell's thesis — by a concern that hitherto unknown funeral customs would develop among the Arabs. The prohibitions were rather a reaction to an already existing and widely practiced

cult of the dead in the Arab peninsula that had been found objectionable. The abolition of a great number of pre-Islamic funeral customs by the Prophet, as reported in the hadith collections, had apparently not been sufficiently effective, and the discrepancy between traditional observances and the new religious rules was noticeable. Attempts to bridge this gap and either to change pre-Islamic funeral customs into Islamic sunna or to eliminate them completely can be detected in hadith in often contradictory rules — for example, hadith both favoring and prohibiting visiting tombs or performing prayers at graves and in cemeteries — that tended to cancel each other out. Even questions regarding the details of the cult of the dead clearly reaching back to *jāhiliyya* times — libations, blood sacrifice on the grave, and attaching palm fronds to the grave — were touched on and the first and the last were finally approved as properly Islamic in the sunna of the Prophet himself.⁴

The construction of funerary architecture therefore represents not only a special problem in the architectural history of the Muslim Middle East, but also touches on a whole array of questions concerning burial and the permissibility of treating a tomb in special ways, among them marking and indicating them with architectural structures, and reconciling those practices with the creed. In the course of this short study, the notion that Islam had a completely negative attitude toward funerary architecture will be more closely examined. Arguments drawn partly from theology, partly from jurisprudence, both of which had to interpret and to enforce the law based on the hadith, will show whether the prohibition against building over tombs in early Islamic times was purely preventive in a general way, or whether it aimed at suppressing particular forms of veneration of the dead and particular built structures. Through such an inquiry one can perhaps discover why funerary buildings represent such a problematic form of architecture for Islam, being, on the one hand, interdicted by

the Prophet himself and, on the other, enjoying great popularity, especially in certain periods.

Collecting a sufficient number of relevant sources on the subject turns out to be more difficult than one might expect. In Islamic literature up to the thirteenth century, descriptions of funerary architecture and its position in Islamic law were of secondary interest. Neither geographers nor historians nor theologians nor jurists appear to have been sufficiently familiar with that particular set of questions to have been drawn into a detailed discussion of them. The easiest to approach, and for that reason the only sources consulted by Western scholars, are the canonical hadith collections of the ninth and tenth century. Their consistent rejection of any kind of building over tombs was what provided the apparently satisfactory explanation for the lack of mausolea in the early Islamic period and was the source for the belief that Islam strictly rejected funerary architecture. Not included in that research were the law compendia and the commentaries on the hadith from the tenth and eleventh century, nor the debates about mausolea and visits to cemeteries in the twelfth and thirteenth set forth by the Syrian Hanbalites Ibn Taimiyya (d. 1328) and his pupil Ibn Qayyim al-Jauziyya (d. 1350)⁵ that arose when the pompous and monumental tombs of the last Ayyubids and the first Mamluks in Aleppo, Damascus, and especially Cairo eclipsed — no doubt to the annoyance of many — the mosques, madrasas, and mansions of the city. Wherever cemeteries began to turn into proper cities of the dead, the question of the compatibility of funerary structures with the creed was generally debated.

The arguments for and against the compatibility with Islamic principles and the legality of mausolea and the veneration of tombs were supplied by theologians and jurists. They began by looking to the past for statements or sunna of the ancestors (*salaf*) on which they could build a decision. There the first thing that strikes one is that their arguments do not center on whether the hadiths concerned were genuine or the *isnāds* (line of transmitters) authentic, but on the views of Malik, Shafi'i, Ibn Hanbal, and Abu Hanifa, whose teachings became the basis for the four *madhāhib*. An explanation might be that except for the Shi'ites, the greater part of medieval fuqaha⁶ and ulema were connected with one of the four schools. Nevertheless if one compares the early law compendia, the first writings reflecting the hadith, such as Shaibani's *Kitāb al-Athār*,⁶ Sahnun's *al-Mudawwana al-kubrā*,⁷ and Shafi'i's *Kitāb al-Umm*⁸ with commentaries on law from the eleventh to the

thirteenth century, a confused picture emerges in which the statements of the various generations of jurists do not always agree. Apparently the law was flexible enough to allow perfectly lawful decisions handed down by fuqaha⁹ or qadis to diverge from the guiding rule of the hadith. From that some observations can be made which allow us to give a more precise picture of the treatment of these prohibitions in actual practice.

THE INTERDICTIONS AGAINST TOMBS IN THE HADITH

Islam's disapproval of tomb building arose mainly from efforts to separate graves from places of worship and to stop the practice of praying at the grave site. Religious rules with that purpose appear in all hadith collections and are regularly found in chapters entitled "*janā'iz*," which regulate precisely the procedures to follow when an individual in the Muslim community dies, including the washing of the corpse, mourning, and funeral rites. Contradictory, or at least divergent, instructions handed down by tradition are given side by side. Their source in most cases is a hadith traced back to the Prophet, but often it can also be the sunna, or the usage of the *ṣaḥāba* or the *tābi'ūn*, the companions of the Prophet and their followers of the first two Muslim generations.

Among this set of instructions are the following prohibitions against the cult of the dead and the veneration of tombs:

- a) an interdiction against praying in cemeteries⁹ and especially by graves;¹⁰
- b) an interdiction against visiting graves¹¹ and sitting next to them¹² (an interdiction leveled almost exclusively against women);¹³
- c) an interdiction against making sacrifices on graves;¹⁴
- d) an interdiction against marking a grave or attaching an inscription to it.¹⁵

They also include the following rules against building on grave sites:

- e) an interdiction against the use of lime mortar (*jīṣ*) and brick (*ājurr*)¹⁶ both inside and on top of the grave and against coating the outside of the grave with clay (*ṭīn*);¹⁷
- f) an interdiction against erecting tents over graves;¹⁸
- g) a general interdiction against erecting a building¹⁹ or constructing places of worship (*masājīd*)²⁰ over graves. This is also aimed against burials in buildings, especially houses, that existed before the burial took place, as well as new constructions.²¹

Finally the instructions aimed at ensuring observance of these interdictions are:

- h) an order to destroy the graves and tombs of the unbelievers of the *jāhiliyya*;²²
- i) a more general order to level all tombs to the ground (*taswīyat al-qubūr*).²³

Such a detailed and extensive catalogue of prohibitions and instructions concerning the cult of tombs and the erecting of structures above them must be understood — contrary to Creswell's thesis — as representing quite a complete list of pre- and early Islamic funeral customs that were actually practiced, and not merely as an abstract set of preventive measures. Interdictions of this kind must have been conceived by Muslims as proscribing ancient traditions practiced by their predecessors who had established a cult of ancestors and practiced veneration of the dead.²⁴ Only actual practice can explain why the prohibition of visiting graves and praying at them could not be enforced, and was violated — if tradition is to be believed — even by such authorities as Malik b. Anas (d. 796).²⁵

The reason for breaking with these ancient customs in Islamic times was that performing prayer at, or facing toward, a grave was considered by strict believers to border on polytheism (*shirk*), and it therefore violated the principle of the unity of God, the *tauḥīd*. In later times the Hanbalite Ibn Qudama al-Maḡḡī (d. 1223) formulated that attitude in these words: "The special treatment (*takhsīs*) of graves by praying by them is similar to the veneration of idols (*aṣṇām*) by prostrating (*sujūd*) oneself before them and wishing to draw near them. We have already mentioned that the beginning of idolatry was the veneration of the dead . . ."²⁶

The prohibition against erecting structures over a tomb (rule g above) has been the basis for alleging a negative attitude by Islam toward tomb structures and mausolea. Summarized in the works on tradition under the collective rubric *al-bina' 'alā l-qubūr* (i.e., "building on graves"),²⁷ it occurs together with the interdictions against *tajṣīs* (treating the tomb with lime mortar), *tat'yīn* (covering the tomb with clay), and *kitāba* (inscribing tombs).²⁸ Nowhere, however, is this building prohibition explained, nor does it refer to a particular type of architecture. We do not know with certainty, for example, whether tomb structures such as the domed mausoleum did or did not originally come within the terms of such an interdiction. The contemporary references mentioning only mortar and bricks seem rather to indicate that they were talking about simple enclosing structures of stone or brick or of cenotaphs in brick.²⁹

Only in later commentaries on hadith collections can more precise references to the kinds of tomb structures that were disapproved of be found, that is, structures referred to as interdicted by the Prophet and at the same time known to be in the repertory of medieval Islamic tomb architecture.³⁰

Although direct references to this group of the Prophet's sayings are not unknown, they do not belong to the hadiths transmitted by all collectors right from the beginning. In the largest canonical collection of hadith, that of al-Bukhari, they are completely missing; the five other collections as a rule transmit the group via one single *isnād*. Only the *Musnad* of Ibn Hanbal contains three separate lines of tradition. The early collections of the Shi'ā do not mention the prohibitions against building over tombs at all. Only the late compilation of al-Hurr al-'Amili (d. 1650) contains the hadith in its common form, but traced back as usual to one of the imams (in this case, 'Ali al-Rida).

Of the three main lines of transmission that can be distinguished, only one was probably involved in the wider circulation of the hadith concerned. Ibn Maja (1:498) and Ibn Hanbal (6:299) are based on two isolated lines of transmission whose individual members — often difficult to identify — came from Iraq, Syria, and Egypt, but traditions from these regions are in the case of this hadith exceptions to the rule.³¹ It was mainly transmitted from the Iraqi cities of Basra, Kufa, and, later on, Baghdad. In the case of the prohibition against building over tombs, the tradition that was handed down by the Prophet's companion Jabir b. 'Abd Allah was preferred over all others. Ibn Hanbal incorporated it in his *Musnad* from Basri and Baghdadi transmitters.³² The key person for the circulation of this hadith, however, remains the Basri Ibn Juraij (d. 767) in the beginning of the Abbasid period. Not until then, i.e., fairly late, did his tradition become the basis for a many-stranded transmission of the hadith by men from Kufa and Baghdad, ending in the collections of Ibn Hanbal (3:299),³³ Abu Dawud,³⁴ Muslim,³⁵ Tirmidhi,³⁶ and finally Nasa'i³⁷ (see fig. 1).

THE ARGUMENTS AGAINST FUNERARY ARCHITECTURE

It is striking that apparently no one felt a need to formulate theological arguments against funerary architecture. The well-known eschatological images of paradise or hellfire as the last abode of the soul are only rarely introduced into the discussion as an argument for

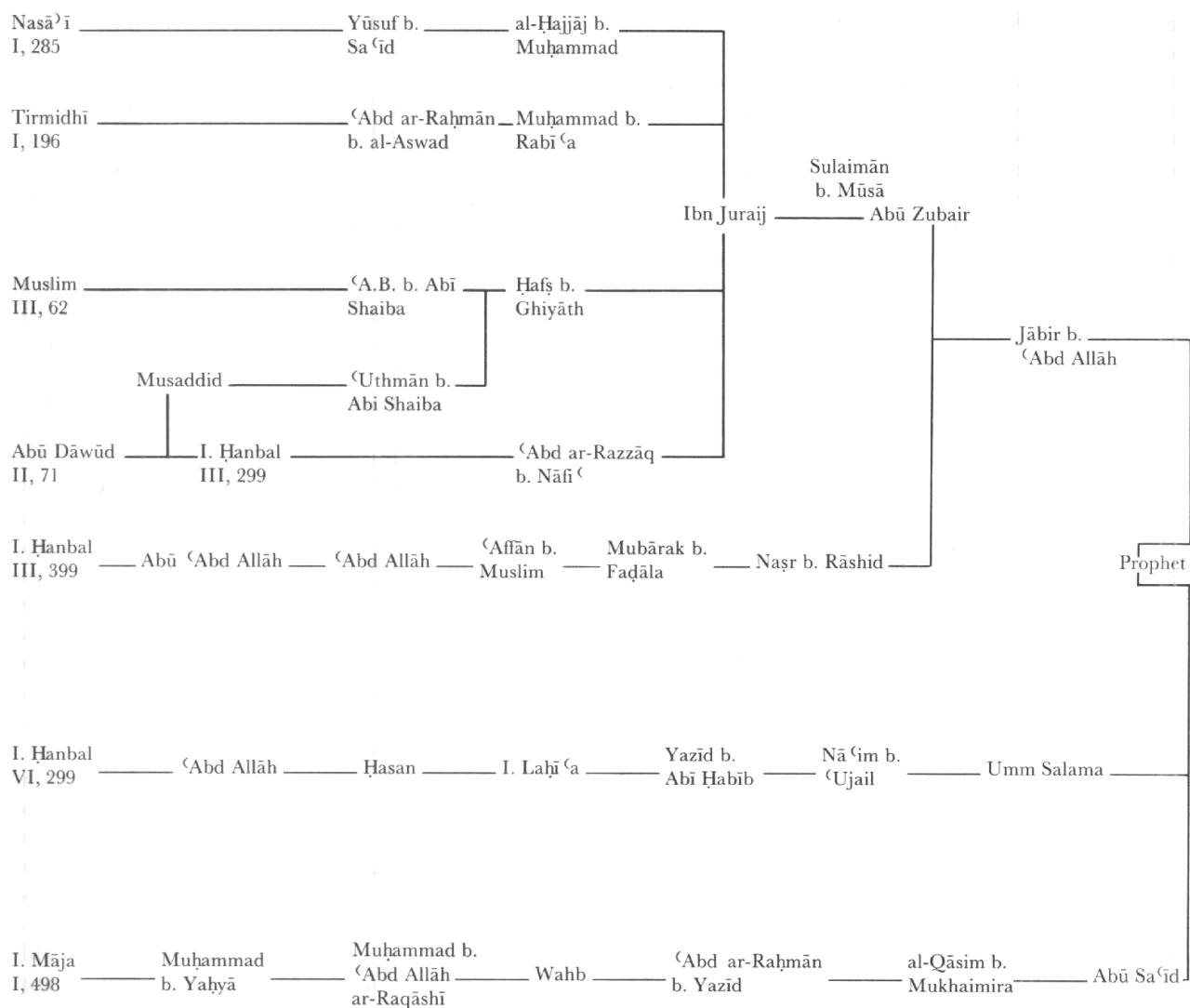


Fig. 1. Main lines of transmission of the hadith.

the futility of building a habitation, a *domus aeterna* or *domus animae*, for the soul of the dead. Rather the opponents of funerary architecture adduced their reasons against it from the form and features of buildings associated with tombs. In the popular mind in all times the idea persisted that the dead were mentally and physically actually present in the grave, untouched by death. This led to the notion that buildings on top of, or structures inside, the grave could be a bad influence on, or even cause physical pain to, the corpse. The disapproval of funerary structures sometimes took the form of an aversion to particular building materials such as

lime mortar, brick, and clay.³⁸ Covering a tomb with brick and lime-mortar structures was regarded as a manifestation of worldly vanity (*zīnat al-dunyā*) for which the dead man on his passage to the other world had no use and was not suited.³⁹ It was felt to be inappropriate to make tombs both obvious and durable through the use of bricks and mortar.⁴⁰ Both contradicted the principle of *taswīyat al-qubūr*. It was much more important, however, not to expose the dead inside the tomb to lime and brick or to seal the *laḥd*, the charnel vault and the lateral niche, with those materials, because lime and brick had been in contact with fire, and it was believed

that they could dry out the grave,⁴¹ a belief also derived from the Prophet's sunna: "The Prophet attached a palm frond to two graves and said, 'Perhaps this might help against the desiccation of both of them.' Therefore they [sc. the theologians] thought that what had been touched by fire would accelerate the desiccation [of the grave] by sun and air."⁴²

The rejection of fired brick and lime thus finds its explanation in the idea of the grave as a place without coolness or shade, a common belief in ancient Mesopotamia and pre-Islamic Arabia that was taken over by Islam. It was believed that the soul of the dead would suffer thirst in the grave and be in need both of libations of water and of the coolness of shadow.⁴³ In Islamic times, the idea of the *adhāb al-qabr*, a punishment that could be inflicted on the dead in the grave for lesser sins,⁴⁴ might have been combined with it. The association of bricks and lime made in fire (*al-nār*) with the hellfire (*al-nār*) that threatened to burn the dead in his grave apparently added to their aversion to those two materials.⁴⁵

Concern for the welfare of the dead was also what led to the argument over coating the outside of the tomb with clay. People were afraid that the dead would not be able to hear the call to prayer (*adhan*) or to perform the prayer.⁴⁶ Behind this fear lay the common belief that the dead were able to hear and understand the voices of the living. The prohibition against covering a tomb with clay can be traced back, just as in the case of bricks and mortar, to the highest authority, the sunna of the Prophet. Ibn Sirin (d. 728) is reported to have avoided its use,⁴⁷ and the prohibition against *tatyīn* can still be found in Ibn Qudama, who refers to Ibn Hanbal.⁴⁸ This is remarkable when one considers that both al-Shafi'i and Hasan al-Basri allowed *tatyīn al-qabr* and obviously placed no special significance on the hadith.⁴⁹

In the same vein funeral structures were thought to pose a threat to the intact body, a heavy burden lying on the corpse, crushing and oppressing it by its weight.⁵⁰ It was because of this, according to the fuqaha', that the Prophet ordered the leveling of all tombs to the ground to alleviate the corpse's suffering.⁵¹

The last argument against building over graves was that it had its origins in pagan pre-Islamic or non-Islamic custom, for obviously those roots were known: "The objection [to funeral buildings] consists in its imitating the unbelievers (*al-kuffār*) among the *ahl al-kitāb* and the polytheists (*al-mushrikūn*) among the *ahl al-jāhiliyya*, because they covered the tomb with panels of marble or built over it. The shari'a, however bases

many of its instructions on its opposition to unbelievers and polytheists."⁵²

ATTITUDES TOWARD TOMB STRUCTURES IN THEOLOGY AND JURISPRUDENCE

When one turns to the writings of Islamic theologians and jurists one finds a very different picture. To determine the role in everyday life played by prohibitions based on the hadith of the Prophet, particularly those incorporated into legal practice, it is useful to cite Goldziher's comment that the hadith were held in greater esteem by the Muslims of the first generations after Muhammad's death than by the later *fiqh* generations.⁵³ Perhaps the need to reconcile religious requirements with the reality of funeral customs led to the decision by Sunni and Shi'ite theologians and jurists not to stigmatize funerary architecture out of hand as *ḥarām*. Instead structures over tombs were classified as *makrūh* (objectionable, disapproved of), a much weaker expression. That this term did not convey a strict prohibition is clear from its definition: "*Makrūh* is what the shari'a requires be avoided, but it is an admonition without coercion. A person who does it [sc. a deed classified as *makrūh*] will not be condemned for it, but he will be praised if he avoids doing it."⁵⁴

Al-Shafi'i, Malik b. Anas, Ahmad b. Hanbal, and Abu Dawud (the transmitter) are reported to have agreed that building over tombs should be categorized only as *makrūh*, not as *ḥarām*.⁵⁵ Although it is likely that Shi'ite circles also agreed, evidence for that cannot be found until the fifteenth-century *Kitāb al-Muntazā'*, a legal manual compiled by the Zaidite Ibn Miftah.⁵⁶ This moderate attitude, regarding funerary structures as only a minor infraction, on the part of those who had to deal with this hadith in practical terms was probably not formulated before the eighth or ninth century, but there are indications that even before that time prohibition, disapproval, or even consenting to erecting funerary structures depended on the attitudes, views, and judgment of the faqih. For instance, Abu Hanifa is reported to have regarded building over tombs (*al-binā' 'alā l-qubūr*) as legal and not objectionable.⁵⁷ Unfortunately neither the *Musnad* of Abu Hanifa nor the *Kitāb al-Aṣl* of Muhammad Hasan al-Shaibani have chapters on *janā'iz*, from which one could draw actual statements by the early Hanafiyya on that complex of questions.

It might have been the liberal attitude of Abu Hanifa and his followers toward funerary architecture which

still in the high Middle Ages caused Ibn Qayyim al-Jauziyya to list Shafi'ites, Malikites, and of course the followers of Ibn Hanbal, but not the Hanafites, among the opponents of mausolea.⁵⁸ In reality, however, there were never any consistent blocks of supporters and opponents of funerary architecture identified with the *madhāhib*; no particular position for any of them can be definitely determined. This explains why already quite early on we find different points of view between teacher and pupil. Malik subscribed to the idea of disapproving building over tombs, but objected only to constructions made out of stone.⁵⁹ But Sahnun, who spread Malik's teachings in the Islamic west, clearly requires the literal fulfillment of this order because the hadiths postulate the *taswiyat al-qubūr*, regardless of what the structure is built: "This [sc. the tradition concerned] is clear evidence (*āthār*) in favor of leveling tombs to the ground. How [after all] can one intend to build over them?"⁶⁰

The opposite view was held by the Maliki qadi of Baghdad, Abu'l-Hasan 'Alī b. 'Umar b. Ahmad al-Qassar (d. 1008).⁶¹ He allowed building a *qubba*, a *bayt*, or a madrasa over a tomb, so long as it did not touch the grave proper,⁶² and so long as the structure did not strive for vainglory and pomp (*mabāha*).⁶³ We can find a similarly acquiescent attitude in the *Kitāb al-Muḥallā* by Ibn Hazm (d. 1064) of Cordoba: "If over it [sc. the grave] a *bayt* or a raised construction (*qā'im*) was built, this was not regarded as objectionable."⁶⁴ He distinguishes strictly, however, between the *bayt*, which was permitted, and constructions inside the tomb or the erection of a *qubba*, which he did not consider acceptable.⁶⁵ The Hanbalite Ibn Muflīh (d. 1362) unambiguously says the same thing when he quotes from the *Kitāb al-Mustawḥab*: "A pompous building (*binā' al-fākh-ir*) is objectionable. But he [sc. the author of the *Kitāb al-Mustawḥab*] emphasizes that there is no objection to a building enclosing it [sc. the tomb] (*binā' mulāṣiq*) because its intention is to mark and preserve it."⁶⁷ Judging from this evidence, the basic attitude of some important authorities who collected and interpreted the hadith and sunna toward the question of building over tombs was less strict than the uncompromisingly negative statements in the hadith texts themselves would lead us to expect. That this interdiction — half-hearted and expressed only in a "disapproval" of funerary architecture — did not seriously inhibit tendencies in the other direction now becomes understandable when we find authorities of religious law simultaneously granting permission for the practice.

A special problem the ulema had to deal with and the one that probably weakened the enforcement of the prohibition against funerary buildings was posed by the *bayt*, the simple Middle Eastern one-room house commonly used as a funerary structure. On the one hand, the *bayt* belonged among the structures banned by the hadith;⁶⁷ on the other, Islamic theology had to cope with the fact that the Prophet had died and had been buried in one. He had been entered in 'A'isha's *bayt* — which together with other *buyūt* and the court wall formed the *dār* of Muhammad in Medina — in spite of the fact that a number of other places outside the house had been proposed for the Prophet's burial site.⁶⁸ It very soon became obvious, however, that this site ran counter both to quite a number of instructions in the hadith and to the sunna of the companions.

According to tradition, Abu Bakr had been the one to tip the scale in favor of the *bayt* for the Prophet's burial, justifying his decision by referring to the Prophet's own words: "No Prophet had died who has not been buried where he died."⁶⁹ The fact remained, however, that the very authority the ulema were appealing to as prohibiting house burials and funerary structures was himself buried in such a place. This inconsistency caused considerable consternation and led to a series of apologies and attempts to answer the questions it generated. Ibn Hanbal, a zealous opponent both of built tombs and their veneration, explained the contradiction by referring to the exceptional position of the Prophet: "He [sc. Ibn Hanbal] held the view (*ra'y*) that the burial of the Prophet took place in a building because it was an appropriate privilege for him by virtue of his exceptional position (*al-tamyīz al-lā'iq*)."⁷⁰ The following quotation also shows that even the Hanbalites of the later Middle Ages were disturbed by this problem and countered attacks by referring to the views of the people closest to the Prophet: "The *ṣahāba* and the *tābi'ūn* and those who came after them were still buried in the open field (*fī l-ṣahārā*). If somebody argued: But the Prophet was buried in his *bayt* and two of his companions [sc. Abu Bakr and 'Umar] with him, then we answered, "'A'isha said: 'This was only done so that his grave would not become a place of worship (*masjid*).'"⁷¹

Even if it is impossible to ferret out completely the role the "bayt of 'A'isha" played in forming the attitudes of the ulema toward funerary architecture, the tendency was to permit the *bayt* as a funerary structure on the grounds that it had such a respectable precedent. Writes Ibn Hazm: "He [sc. Muhammad] already announced the place of his grave by his word: 'The space

that lies between my grave and my minbar belongs to the gardens of paradise.' By saying that, he announced that it [sc. his grave] would be in his *bayt*. He did not object to his grave's being located inside the *bayt* and [therefore] did not object to an erected building (*binā' qā'im*) [on a grave].⁷² When in the Middle Ages two zealous, if unsuccessful, campaigners against mausolea appeared in the persons of Ibn Taymiya and Ibn Qayyim al-Jauziyya, who demanded the demolition of mausolea with domes, "because they represent disobedience to the Prophet, who banned them,"⁷³ the arguments on the other side were not completely unfounded: "Our ancestors (*salaf*) already permitted buildings over the tombs of venerated *shuyūkh* and ulema so that people could visit them and find refreshment sitting next to their mausolea as, for instance, ribats or mosques, which stand over their tombs."⁷⁴

LEGAL DECISIONS

There are some indications that the decision to tolerate funerary architecture depended not only on the views of particular individuals, but on the development of a legal tradition based — somewhat surprisingly — on the laws governing real property.

What gave rise to this were funeral buildings that occupied more of the precious space in a cemetery than the deceased was normally entitled to and thereby prevented the burial of someone else not in a position to enjoy a built tomb.⁷⁵ Added to that was the complaint that constructions above ground led to a lack of homogeneity in the cemetery as a whole. There was also strenuous objection to a practice that made one part of the Muslim community more privileged (*tamyīz*) than the rest after death, when at least theoretically all should be on the same level.⁷⁶ Because of this, funerary buildings were deprecated as an innovation (*bid'a*)⁷⁷ and as symbols of worldly pomp for which the dead had no need.⁷⁸

The earliest evidence for the beginnings of a law governing funerary architecture known to me takes these objections into consideration, but no longer questions the existence of funerary architecture as such. They obviously tried only to limit exaggeration:

Al-Shafi'i said: "I have seen governors who demolished [tombs] in Mecca built inside the city, and I found no jurist who saw therein a wrong decision. If it was a question of tombs on land owned by the dead in their lifetime or bequeathed to their offspring, nothing that was built on their part was destroyed. Only that which no

one called his own was demolished. The demolition took place so that the space around the tomb would not be inaccessible to [other] people or prevent others from being buried there, and to avoid people's being hampered."⁷⁹

The conclusions that can be drawn from this passage are that there existed in Mecca toward the end of the second and beginning of the third century A.H. a kind of legal principle for dealing with funerary buildings derived from the rights governing land ownership and the structures built upon it. The demolitions described by al-Shafi'i might have been occasional acts by particular governors trying to distinguish themselves by their pious observance of the command regarding *taswiyat al-qubūr* that had been approved as legal by the fuqaha' of the city after the event. Even so it is clear that in these early times there was already an accepted and well-defined place where funerary architecture could exist and within whose borders the requirements of the shari'a obviously ceased to function. A tomb on one's own land (*milk*) was untouchable, according to al-Shafi'i's report. For all time to come, this principle would be the guiding rule for dealing with all kinds of funerary structures. The Shafi'ite law in this case even annulled the *kirāha*, the disapproval of funerary buildings: "The *aṣ-ḥāb* [of the Shafi'iya] say, 'If the tomb was his [sc. the proprietor's] own property, then he was permitted [to build] what he wanted, in spite of the disapproval [of *al-binā' 'alā l-qubūr*], and whatever was standing over it [sc. the tomb] was not destroyed.'⁸⁰

This view was apparently shared even by the Hanbali *madhhab*. A pupil of Ibn Taymiyya, Ibn Muflīh, quotes the *Kitāb al-Muḥarrar*: "There is no objection to a *qubba*, a *bayt*, or a *ḥaṣīra* on an owner's land. For burial at such a place, even though it is like this [i.e., even though there is a building standing over the grave], is permitted (*ma'dhūn*)."⁸¹ It is therefore not surprising that after the early ninth century the erection of a funerary structure often went hand in hand with the acquisition of land to ensure its survival. Only in that context can one understand the measures undertaken at the death of the Barmakid Umm al-Fadl, the wet nurse of Harun al-Rashid, who passed away in 'Ana while the Abbasid court was on its way from Raqqa to Baghdad: "Al-Rashid ordered 10 *ajriba* of land bought for her in a garden next to the Wadi l-Qanatir on the banks of the Euphrates. She was buried there and a *qubba* built over her grave."⁸² In contrast to land under tenure (*milk*), to build mausolea on land that was open and unclaimed (*musbala/ṣakhrā'*),⁸³ in a public cemetery (*maqbara mus-*

bala),⁸⁴ or on land that had been turned into waqf land for public purposes (*waqf 'amm*)⁸⁵ was regarded — at least among the Hanbalites — as condemnable in the extreme (*ashaddu kirāhatan*).⁸⁶ When, during the reign of al-Malik al-Zahir Baybars I (1260–77), efforts were made to put an end to the tomb architecture in the cemeteries of Cairo, the opinion of the fuqaha' who favored the sultan's project was governed by these same principles. Ibn al-Siddiq reports that al-'Izz b. 'Abd al-Salam issued a *fatwā* approving the demolition of *qibāb* and *buyūt* and many buildings standing on the Qarafa of Misr because they were built on waqf land which had been ordained for the [public] burial of Muslims. He made an exception [only] for the *qubba* of Imam al-Shafi'i and said it was "because it was built within the *dār* of Ibn 'Abd al-Hakam."⁸⁷

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NOTES

1. K. A. C. Creswell, *Muslim Architecture of Egypt* (= MAE) (rpt., New York, 1982), vol. 1, pp. 110 f., 138.
2. Creswell, MAE, 1:110 f.; Oleg Grabar, "The Earliest Islamic Commemorative Structures, Notes and Documents," *Ars Islamica* 6 (1966): 8, stresses this point to explain the late development of Muslim funerary architecture.
3. Doğan Kuban, *Muslim Religious Architecture* (Leiden, 1985), vol. 2, pp. 27 ff.
4. For an extensive description of early Islamic funeral customs based on the hadith collections of both Ibn Sa'd and al-Bukhārī, see Irene Grütter, "Arabische Bestattungssitten in frühislamischer Zeit," *Der Islam* 31 (1954): 147–73, and *Der Islam* 32 (1957): 79–193. For sacrifices and libations, see ibidem, p. 181; for attaching parts of plants to the grave, see ibidem, p. 173.
5. Muhammad Kabbani, *Die Heiligenverehrung im Urteil Ibn Taimiyas und seiner Zeitgenossen*, Ph.D. diss., Bonn University, 1979.
6. Carl Brockelmann, *Grundriß der arabischen Literatur. 2. den Supplementbänden angepasste Ausgabe*, 2 vols. (Leipzig, 1943–49) (= GAL); *Supplementbände I–III* (Leiden, 1937–42) (= GAL Suppl.), Supplement, vol. 1. p. 288. Shaibānī died in 805.
7. GAL Suppl. 1:299. He died in 854.
8. Fuat Sezgin, *Geschichte des arabischen Schrifttums* (= GAS), vol. 1 ff. (Leiden, 1967), vol. 1, pp. 484 ff. Shāfi'ī died in 820.
9. Sulaimān Abū Dāwūd, *al-Sunan al-Muṣṭafā* (hereafter Abū Dāwūd). Two parts in one volume (Cairo, n.d.), part 1, p. 80; Abū 'Abd Allāh Muḥammad Ibn Māja, *Sunan* (hereafter Ibn Māja), 2 vols. ed. M. Fu'ād 'Abd al-Bāqī (Cairo, 1372/1952), vol. 1, p. 246; Aḥmad Ibn Ḥanbal, *Musnad* (hereafter Ibn Ḥanbal), 6 vols. (Beirut, 1398/1978), vol. 3, pp. 83, 96; Abū Muḥammad 'Alī al-Dārimī, *al-Sunan* (hereafter al-Dārimī), ed. 'A. H. Y. al-Madani (Cairo, 1386/1966), part 1, p. 263.
10. Abū Dāwūd 2:72; Muslim b. al-Ḥajjāj al-Qushairī, *Ṣaḥīḥ* (hereafter Muslim), 4 parts. (Cairo, n.d.), part. 3, p. 62, Abū 'Abd Allāh Muḥammad al-Tirmidhī, *Ṣaḥīḥ* (hereafter Tirmidhī), (Bulāq, 1292 H.), part 1, p. 195; Ibn Ḥanbal 4:135.
11. Ibn Ḥanbal 1:229, 287, 324, but note the abrogation of this hadith at Ibn Ḥanbal 1:145; Ibn Māja 1:500; Abū Dāwūd 2:72; Tirmidhī 1:19; Abū 'Abd al-Raḥmān Aḥmad al-Nasā'ī, *Sunan* (hereafter Nasā'ī), 2 vols. (Cairo, 1312 H.), vol. 1, pp. 285 f.
12. Ibn Māja 1:449; Abū Dāwūd 2:72; Muslim 3:62; Nasā'ī 1:285; Tirmidhī 1:195; Ibn Ḥanbal 4:135; Muḥammad b. al-Ḥasan Ḥurr al-'Āmilī, *Wasā'il al-Shi'a ilā Taḥṣīl Masā'il al-Shari'a* (hereafter 'Āmilī), 5 vols. (Baghdad/Najaf, 1377–81/1957–61), vol. 4, p. 90.
13. Ibn Māja 1:502; Abū Dāwūd 2:72; Tirmidhī 1:196; Ibn Ḥanbal 1:229, 287, 324, 2:337, 356, 3:443.
14. Abū Dāwūd 2:71.
15. Ibn Māja 1:498; Tirmidhī 1:196; 'Abd Allāh b. Muḥammad Ibn Abī Shaiba, *al-Muṣannaf fī'l-Aḥādīth wa-l-Āthār* (hereafter Ibn Abī Shaiba), 15 vols., ed. A. al-Afghānī (Bombay, 1399–1403/1979–83), vol. 3, pp. 334 f. The custom of installing inscribed wooden markers on a grave is supported both by Shi'ite and Sunni authorities. For a wooden marker on the grave of Umm Muḥammad, mother of the caliph al-Mahdī, see 'Āmilī 4:83, and on that for the daughter of Imam Mūsā al-Kāzīm, see Abū Ja'far b. Ya'fūt al-Kulīnī al-Rāzī, *al-Kāfī* (hereafter Kulīnī), 8 vols., ed. 'A. A. al-Ghiffārī (Teheran, 1388–89 H.), vol. 3, p. 202. The Ḥanafīyya also declared in favor of the marking of graves with wooden plaques or stone slabs, see Abū 'Abd Allāh Muḥammad Ibn Muflīḥ al-Maqdisī, *Kitāb al-Furū'* (hereafter Ibn Muflīḥ, *Furū'*), 6 vols. (Beirut, 1402–4/1982–84, vol. 2, p. 270.
16. Ibn Māja 1:498; Muslim 3:62; Nasā'ī 1:285; Tirmidhī 1:196; Ibn Ḥanbal 3:399, 6:299; Ibn Abī Shaiba 3:337 f.; 'Āmilī 4:90.
17. Ibn Abī Shaiba 3:342; 'Āmilī 4:91; Abū Muḥammad 'Abd Allāh Ibn Qudāma al-Maqdisī, *al-Mughnī* (hereafter Ibn Qudāma, *Mughnī*), 9 vols. (Riyād, n.d.), vol. 2, p. 507.
18. Ibn Abī Shaiba 3:337 f.; Ibn Qudāma, *Mughnī* 2:507.
19. Ibn Māja 1:498; Abū Dāwūd 2:71; Muslim 3:62; Nasā'ī 1:285; Tirmidhī 1:196; Ibn Ḥanbal 3:299, 399, 6:299; 'Āmilī 4:90 f.
20. Ibn Ḥanbal 1:229, 287; Nasā'ī 1:287; Kulīnī, 3:228; 'Āmilī 4:127 f.
21. Muḥammad b. Ismā'īl al-Bukhārī, *Kitāb Jāmi' al-Ṣaḥīḥ* (hereafter Bukhārī), eds. M. L. Krehl, vols. 1–3 (Leiden 1862–68), Th. W. Juynboll, vol. 4 (Leiden, 1908), vol. 1, p. 120; Abū Dāwūd 1:319; Ibn Ḥanbal 2:337.
22. Bukhārī 1:119; Abū Dāwūd 1:75; Ibn Ḥanbal 1:96; 3:212; Ibn Abī Shaiba 3:388; 'Āmilī 4:91.
23. Muslim 3:61; Nasā'ī 1:285; Tirmidhī 1:195; Ibn Abī Shaiba 3:341 f.
24. The pre-Islamic treatment of a deceased person and his grave could combine commemoration and veneration in the form of his funeral stela, rendered in texts mostly as *nfs* (= soul, life). Those stelae were common not only on the Arab peninsula but also in Nabataea and in isolated cases even in the Palmyrene. Greek bilingual inscriptions give either stela (στήλη) or mneimeion (μνημεῖον) [as the equivalent of nf(b,p)s(sh)]; Enno Littmann, *Publications of the Princeton University Archeological Expeditions to Syria in 1904–1905 and 1909*, "Division IV: Semitic Inscriptions; section A: Nabataean Inscriptions" (Leiden, 1914), nos. 41, 105. In addition, *nbs* had the meaning "funeral monument," (C. Brauner, *A Comparative Lexicon of Old Aramaic* (Ann Arbor, Mich., 1974), pp. 381 ff.; see also *Corpus Inscriptionum Semiticarum*, Pars V, "Inscriptiones Himyariticas et Sabaeas continens I–III (ff.)"

- (Paris, 1889), vol. 2, no. 191. Erecting stone stelae designated as *nṣb* (in Arabic *nuṣub*, pl. *anṣāb*) was associated not only with the funeral but also with the cult of gods and ancestors. For the cult of the *anṣāb* and its disapproval by Islam, see Ignaz Goldziher, "Ueber Todtenverehrung im Heidenthum und im Islam, *Muhammedanische Studien*, Teil I, Excurs II (repr. Hildesheim/New York of the 1888 Halle edition), pp. 232 ff. The "maṣjid" erected by the pre-Islamic poet and orator Quṣṣ b. Sā'ida al-Iyādī between the graves of his two brothers might have been such a commemorative stela (see Henri Lammens, *Fāṭima et les filles de Mahomet* [Rome, 1912], p. 119). When one considers the translation of the word *maṣjid* as "a place where one prostrates oneself," the connection to the commemoration of the dead by prayer becomes obvious. Compare J. T. Milik and J. Starcky, "Nabataean, Palmyrene and Hebrew Inscriptions," F. V. Winnett and W. L. Reed, eds., *Ancient Records of North Arabia III* (Toronto, 1970), p. 157, no. 111: "(dnh m) sgd' dy 'abdw PN" "Ceci est le lieu de culte qu'ont fait PN." This inscription was associated with a grave. In pre-Islamic times cultic actions such as the sacrifice and the oath at the grave (Goldziher, "Todtenverehrung," pp. 239 ff.; Julius Wellhausen, "Reste arabischen Heidenthums," *Skizzen und Vorarbeiten Nr. 3* [Berlin, 1887], pp. 101 f.; Maria Höfner, "Die vorislamischen Religionen Arabiens," *Religionen der Menschheit*, vol. 10.2 [Cologne-Stuttgart-Berlin-Mainz, 1970], p. 358), and the enclosing of the gravesite with *anṣāb* forming a sacred area ("ḥimā"; see Goldziher, "Todtenverehrung," pp. 235 ff.; Wellhausen, "Reste," pp. 101 f.; Höfner, "Religionen," p. 359), belonged to a set of practices in which the cult of the dead and the veneration of the pagan pantheon in Arabia were intermingled in a striking way.
25. Bukhārī 1:119.
 26. Ibn Qudāmā, *Mughnī* 2:508. Nevertheless, Ibn Qayyim al-Jauziyya regarded as the source of the pre-Islamic cult of the gods Wadd, Yaghūth, Ya'ūq, Naṣrā, and al-Lāt the veneration of tombs of people who had the same name (*Ighāthāt al-Laḥfān min Maṣāyid al-Shaītān*, 2 vols., ed. M. S. Kilānī [Cairo, 1381/1961], vol. 1, p. 203). The completely different effect and reception of that prohibition in the widest circles of theologians and jurists is reflected in a short resumé in al-ʿAinī's (d. 1448) commentary on the *Ṣaḥīḥ* of al-Bukhārī. According to him, Ibn Ḥanbal (d. 855) regarded praying in cemeteries as essentially *ḥarām* and Ibn Ḥazm in later times agreed with him (Maḥmūd b. Aḥmad al-ʿAinī, *ʿUmdat al-Qārī fī Sharḥ Ṣaḥīḥ al-Bukhārī*, 11 vols. [Cairo, 1308/1969], vol. 2, p. 351). Sufyān al-Thaurī (d. 778), al-Auzāʿī (d. 774), and Abū Ḥanīfa (d. 767), however, categorized the same thing only as "disapproved of" (*bi-kirāha*). Al-Shāfiʿī (d. 820) allowed prayers in cemeteries under the condition that the soil was pure (*ṭāhir*) and had not been contaminated by dug-up graves (ibidem, 2:351). Mālik b. Anas, Ḥasan al-Baṣrī (d. 728), and ʿAbd Allāh b. ʿUmar (d. 693) departed again from that view; they permitted praying in cemeteries without any restriction (ibidem, 2:351 ff.).
 27. Muslim 3:61; Naṣāʾī 1:285; Ibn Māja 1:498; Abū Dāwūd 2:7.
 28. See notes 16, 17, 18. The correct wording is: *nahā l-rasūlu l-lāhi an yubnā ʿalā l-qabr*, "The Messenger of God prohibited building over a grave."
 29. Compare the slightly altered saying of the Prophet in the inscription of the tomb of Dhū l-Nūn al-Miṣrī, who died in 859 (*Corpus Inscriptionum Arabicarum*, 9 vols. (Paris, 1894 ff.), part I, "Le Caire II," no. 562): "*wa-auṣā fī waṣīyyatihī l-musnadati ʿanhū an lā yubannā qabruhū wa lā yu ʿqada ʿalaihī qubbatun*." This testamentary disposition probably refers in the first part to a disapproval of structures not on the grave but more likely inside it, namely the building of the inner walls of a *shaqq* or *lahd* with bricks or coating them with lime mortar.
 30. See the following sections. In other cases the hadith is also quoted, if the intention was to prevent building over a grave by a testamentary will. In later times domed mausolea are clearly meant. Compare the case of Abū Ṭāhir al-Shabāshī (d. 1017), *maulā* of the Būyid Abū l-Fawāris, on whose grave a *qubba* was built in violation of his wish "*an lā yubnā ʿalayhī*" (Abū l-Faraj ʿAbd ar-Raḥmān b. ʿAlī b. al-Jauzī, *al-Muntazam fī Taʾrīkh al-Mulūk wa-l-Umam*, vols. 5–10 [Haidarabad, 1357–60 H.], vol. 7, pp. 288 f.). The same wish was uttered by the Ayyubid Sultan al-Mālik al-Muʿazzam ʿIsā (d. 1226), see ʿAbd al-Qādir b. Muḥammad al-Nuʿaimī, *al-Dāris fī Taʾrīkh al-Madāris*, 2 vols., ed. G. al-Ḥasanī (Damascus, 1367/1948), vol. 1, p. 580, and Abū l-Fidāʾ Ismāʿīl b. Kathīr, *al-Bidāya wa-l-Nihāya*, 14 parts in 7 vols. (Beirut/Riyadh, 1966), part 13, p. 151.
 31. Ibn Māja 1:498 <Muḥ. b. Yahyā? <Muḥ. b. ʿAbd Allāh al-Raḥāshī, Basrian, d. 830, or 833; Aḥmad b. ʿAlī b. Ḥajar al-ʿAsqalānī, *Tahdhīb al-Tahdhīb* (hereafter *Tahdhīb*), 12 vols. (Beirut 1390/1971), vol. 9, p. 276 <Wahb (Wuhaib b. Khālīd?) <ʿAbd al-Raḥmān b. Yazīd, Damascene, d. 770 (*Tahdhīb* 6:578 f.) <al-Qāsim b. Mukhaimira, Kufian, died during the caliphate of ʿUmar b. ʿAbd al-ʿAzīz; Abū ʿAbd Allāh Muḥammad b. Saʿd, *Kitāb al-Ṭabaqāt al-Kubrā* (hereafter *Ṭabaqāt*), 9 vols., ed. E. Sachau, E. Mittwoch, J. Horowitz, et al. (Leiden, 1904–40), vol. 6, p. 211, <Abū Saʿīd al-Muʿallā, from Medina, d. 693 (*Tahdhīb* 12:107) <Muḥammad; Ibn Ḥanbal 6:299 <ʿAbd Allāh <Ḥasan? <Ibn Laḥīʿa, Judge in Miṣr, d. 790 <Yazīd b. Ḥabīb, from Miṣr, d. 745 (*Ṭabaqāt* 7/2:202; *Tahdhīb* 11:318 f.) <Nāʿim b. ʿUjail, from Medina, *maulā* of Umm Salama (*Ṭabaqāt* 5:219) <Umm Salama, wife of the Prophet, d. 678 or 679 or 680 <Muḥammad.
 32. Ibn Ḥanbal 3:399 <ʿAbd Allāh <ʿAffān b. Muslim, from Baghdad, d. 825 (*Ṭabaqāt* 7/2:51) <Mubārak b. Faḍāla, Basrian, d. 781 or 782 (*Tahdhīb* 10:28 ff.) <Naṣr b. Rāshid? <Abū Zubair, from Medina, d. 743 (*Tahdhīb* 9:440 ff.; *Ṭabaqāt* 5:354) <Jābir b. ʿAbd Allāh, from Medina, d. 693 or 697 (Aḥmad b. ʿAlī b. Ḥajar al-ʿAsqalānī, *al-Isāba fī Tamyīz al-Ṣaḥāba* [hereafter *Isāba*], 4 vols. [Cairo 1328/1910], vol. 1, p. 213) <Muḥammad.
 33. Ibn Ḥanbal 3:229 <ʿAbd al-Razzāq b. Nāfiʿ, d. 826 (*Tahdhīb* 6:310 ff.) <Ibn Jurajj (ʿAbd al-Malik b. ʿAbd al-Azīz) from Mecca, moved to Basra and died 767 (*Ṭabaqāt* 5:354) <Jābir b. ʿAbd Allāh, from Medina, d. 693 or 697 (*Isāba* 1:213) <Muḥammad.
 34. Abū Dāwūd 2:71 A = Ibn Ḥanbal 3:299 (see note 33). Abū Dāwūd 2:71 B <Musaddid b. Musarhid, Basrian, d. 842 (*Tahdhīb* 10:107) <ʿUthmān b. Abī Shaiba, Kufian, d. 853 (*Tahdhīb* 7:149 ff.) <Ḥafṣ b. Ghiyāth, judge in Baghdad, d. 805 (*Ṭabaqāt* 6:271; *Tahdhīb* 2:415 f.) <Ibn Jurajj <Sulaimān b. Mūsā, Damascene, d. 737 (*Tahdhīb* 4:226 f.) <Jābir <Muḥammad.
 35. Muslim 3:62 <Abū Bakr b. Abī Shaiba, Kufian, d. 845 (*Tahdhīb* 6:2 ff.) <Ḥafṣ b. Ghiyāth <Ibn Jurajj <Abū Zubair <Jābir <Muḥammad.
 36. Tirmidhī 1:196 <ʿAbd al-Raḥmān b. al-Aswad, Kufian, d. after 854 (*Tahdhīb* 6:140) <Muḥammad b. Rabiʿa, died in Baghdad (*Tahdhīb* 9:162) <Ibn Jurajj <Abū Zubair <Jābir <Muḥammad.
 37. Naṣāʾī 1:285 <Yūsuf b. Saʿīd al-Anṭakī al-Maṣṣīṣī, d. 885

- (*Tahdhīb* 11:414 f.) <al-Ḥajjāj b. Muḥammad, from Baghdad, lived for some time in Maṣṣīṣa, d. 822 in Baghdad (*Tahdhīb* 2: 205 f.) <Ibn Juraij <Abū Zubair <Jābir <Muḥammad.
38. Compare Grütter, "Bestattungssitten," *Der Islam* 32, p. 172, and the corresponding prohibitions in the hadith, supra, notes 16 and 17. For the condition of the dead person and his soul within the grave, see Ragnar Eklund, *Life between Death and Resurrection according to Islam*, Ph. D. diss., Uppsala 1941.
 39. Yahyā b. Sharaf al-Nawawī, *al-Majmūʿ Sharḥ al-Muḥadhdhab* (hereafter Nawawī, *Majmūʿ*), 12 vols. (Cairo 1344/1925), vol. 5, p. 296; Ibn Qudāma, *Mughnī* 2:50. Ibn Muflīh, *Furūʿ* 2:270, reports that the pious Umayyad caliph ʿUmar b. ʿAbd al-ʿAzīz rejected structures made of brick over his grave. The prohibition against building with bricks on a grave is also commonly accepted among the Shiʿa; compare ʿĀmilī 4:91.
 40. Muḥammad Nāṣir al-Dīn al-Albānī, *Aḥkām al-Janāʿiz wa-Bi-daʿuhā* (Beirut, 1388/1969), p. 20.
 41. Ibn Abī Shaiba 3:337 f. To illustrate this archaeologically, one can refer for instance to grave shafts connected with above-ground tomb-houses and towers in Rayy, all built with bricks; see Chahriyar Adle, "Constructions funéraires à Rey circa X^e-XII^e siècle," *Akten des VII. internationalen Kongresses für iranische Kunst und Archäologie* (Berlin, 1979), pp. 511 ff.
 42. Abū l-Faiḍ Aḥmad b. al-Ṣiddīq al-Ghumārī al-Shāfiʿī, *Ihyāʾ al-Maqbūr min Adillat Istihbāb Bināʾ al-Masājid wa-l-Qibāb ʿalā l-Qubūr* (hereafter Ibn al-Ṣiddīq, *Ihyāʾ*) (Cairo, ca. 1925), p. 14; compare Muslim 2:111 for that hadith.
 43. For the Babylonian and the Greater Syrian region, compare André Parrot, *Le "Refrigerium" dans l'au-delà* (Paris, 1937), pp. 5 ff. and pp. 55 f., and, for the Arab peninsula, J. Smith and Y. Yazbeck-Haddad, *The Islamic Understanding of Death and Resurrection* (Albany N.Y., 1981), pp. 149, 153. For that reason, Daneshvari recognizes as one of the main characteristics of a tomb building that its shadow cools the grave and the dead. For that view, worked out especially by Iranian mystics, see Abbas Daneshvari, *Medieval Tomb Towers of Iran* (Lexington, Ky., 1968), pp. 9 ff.
 44. Smith and Yazbeck-Haddad, *Islamic Understanding of Death*, pp. 44 ff.
 45. Ibn al-Ṣiddīq, *Ihyāʾ*, p. 14, adds that the prohibition against building the grave with bricks and lime mortar does not apply if they are used only for the outer building, because the dead will in that case have no immediate contact with them. A similar view is found in the Shiʿite collection of ʿĀmilī 4:5, in which ʿAlī attests that bricks on a grave can cause no harm to the dead.
 46. Ibn Qudāma, *Mughnī* 2:507, and ʿĀmilī 4:91.
 47. Ibn Abī Shaiba 3:342.
 48. Ibn Qudāma, *Mughnī* 2:507.
 49. Ibidem.
 50. Ibn al-Ṣiddīq, *Ihyāʾ*, pp. 15, 17.
 51. Ibidem, p. 15.
 52. Ibn Qudāma, *Mughnī*, and Ibn Muflīh, *Furūʿ*, quoted by Ibn al-Ṣiddīq, *Ihyāʾ*, p. 16.
 53. Ignaz Goldziher, "Kämpfe um die Stellung des Hadīth im Islam," *Zeitschrift der Deutschen Morgenländischen Gesellschaft* 61 (1907): 863.
 54. Muḥammad Abū Zahra, *Uṣūl al-Fiqh* (Cairo, n.d.), p. 45.
 55. Nawawī, *Majmūʿ* 5:298; Ibn Muflīh, *Furūʿ* 2:272, appeals to a corresponding statement by Ibn Ḥanbal. Al-Shāfiʿī does not use the word *kariha*, but says "*la uḥibbu*" (Muḥammad b. al-Idrīs al-Shāfiʿī, *K. al-Umm* (hereafter *al-Umm*), 8 vols, ed. M. Zuhri al-Najjār [Cairo, 1381/1962], vol. 1, p. 277.
 56. ʿAbd Allāh b. Abū l-Ḥasan b. Miftāḥ al-Zaidī, *Kitāb al-Muntaẓa ʿal-Mukhtār min al-Ghaith al-Midrār al-Mufattiḥ li-Kanāʾim al-Aẓhar fī Fiqh al-Aʾimma al-Aṭhar*, 4 vols. (Cairo, 1341/1922), vol. 1, p. 440. The *K. al-Muntaẓa* is the commentary to the *Kanāʾim al-Aẓhar fī l-Fiqh al-Aʾimma al-Aṭhar* of Aḥmad b. Yahyā al-Murtaḍā (d. 1437); see Brockelmann, *GAL* 2:244. Ibn Miftāḥ pronounces himself as disapproving funerary structures only in cases in which the deceased was not known for his or her virtue. Obviously he would not have disapproved of the *istithnāʾ* for the imams, the exceptional case in which it was permitted to build tombs over their graves. This exception, including the tombs of the Prophet and the imams explicitly, can still be found at ʿĀmilī 4:90.
 57. Nawawī, *Majmūʿ* 5:298; Abū ʿAbd Allāh Muḥammad Qāḍī Ṣafad al-Dimashqī, *Raḥmat al-Umma fī Khtilāf al-Aʾimma* (Cairo, 1386/1967), 73; ʿAbd al-Wahhāb al-Shaʿrānī, *Kitāb al-Mizān*, 2 vols. (Cairo, 1291/1874), vol. 1, p. 271. Reports that Abū Ḥanīfa approved of tombs without any restriction may have been negative propaganda by other religious schools against the Ḥanafīyya, but they did circulate widely. Compare the work on the differences between the teachings of the *madhāhib* by Muḥammad b. Aḥmad b. Rushd, *Kitāb Bidāyat al-Mujtahid wa-Nihāyat al-Muqtaṣid* (Cairo, n.d.), part 1, p. 143.
 58. Ibn Qayyim al-Jauziyya, *Ighāthat al-Lahfān* 1:204. He stresses that the majority of the religious schools (ʿ*ammāt al-tawāʾif*) had declared buildings on graves to be prohibited (*bi-nahy*) and in addition that especially the schools of Mālik, Shāfiʿī and Aḥmad b. Ḥanbal declared them to be strictly forbidden (*ṣaraḥa bi-taḥ-rīm*), which is, as we have seen, not quite true. Significantly, Ibn Baṭṭūṭa could visit the "*qubba ʿaẓīma*" of Abū Ḥanīfa in the Khaizurān cemetery in Baghdad, but not of Ibn Ḥanbal, who had none: attempts to build him a *qubba* had failed by "divine interference" (Ibn Baṭṭūṭa, *Riḥla* [Beirut, 1388/1968], p. 220).
 59. Mālik b. Anas and Saḥnūn b. Saʿīd al-Tanūkhī, *al-Mudawwana al-Kubrā*, 9 vols., ed. Muḥ. al-Maghribī al-Tūnisī (Cairo, 1323 H), vol. 1, p. 189.
 60. Ibidem. For Saḥnūn's written work, see *GAL* 1, *Supplement*, p. 299.
 61. A short note on him in *GAS* 1:481.
 62. Ibn al-Ṣiddīq, *Ihyāʾ*, p. 11. His report goes back to a *risāla* of a certain al-Tamīmī al-Maghribī al-Tūnisī (for him see ʿUmar Riḍā Kaḥḥāla, *Muʿjam al-Muʿallifin*, 15 vols. [Damascus, 1372-81/1957-61], vol. 2, p. 263). The attitude of Ibn al-Qaṣṣār was applauded by Ibn Rushd (Ibn al-Ṣiddīq, *Ihyāʾ*, p. 11).
 63. Ibidem. His source is a *sharḥ* commentary of a certain al-Sijilmāsi, about which he gives no further detail.
 64. Abū Muḥammad ʿAlī b. Ḥazm, *Kitāb al-Muḥallā*, 11 vols., ed. A. M. Shākir (Beirut, n.d.), vol. 5, p. 133.
 65. Ibidem.
 66. Ibn Muflīh, *Furūʿ* 2:272. The author of the *K. al-Mustawṣab* and the *K. al-Muḥarrar*, whose name is not mentioned by Ibn Muflīh, is probably Majd al-Dīn Abū l-Barakāt ʿAbd al-Salām b. Taimiyya (d. 1243), the grandfather of the famous Taqī al-Dīn. Majd al-Dīn lived and taught at Harrān and was attached to the Ḥanabala. Among his works is the *K. al-Muḥarrar fī l-Fiqh ʿan Madhhab al-Imām Aḥmad b. Ḥanbal* (*GAL* 1, *Supplement*, p. 690) which has been preserved, together with its commentary, the *Nukat wa-l-Fawāʿid al-Sunniyya* by Ibn Muflīh. In this commentary Ibn Muflīh quotes very often from the *K. al-Mustawṣab*, but does not mention the author. He introduces his quotation with

- the words, “*qāla šāhib al-mustau‘ab wa-l-muḥarrar*,” as he does in the *K. al-Furū‘*. He obviously means the same person.
67. See n. 22.
 68. Abū Muḥammad ‘Abd al-Malik b. Hishām, *Sīrat al-Nabī*, 2 vols., ed. F. Wüstenfeld (Göttingen, 1858–60), vol. 1, p. 1019; Ibn Sa‘d, *Ṭabaqāt* 2:70 ff.
 69. Ibidem.
 70. Ibn al-Šiddīq, *Iḥyā’*, p. 5. Ibn al-Šiddīq rejects the notion that the early Muslim community in Medina consciously gave the privilege of being buried in a building only to the Prophet, because his successors, the caliphs Abū Bakr and ‘Umar, were later buried with him in the same place. The companions of the Prophet, who had allowed these burials in the *bayt* of ‘Ā’isha, apparently knew nothing of this privilege.
 71. Ibn Qudāma, *Mughnī* 2:509.
 72. Ibn Ḥazm, *K. al-Muḥallā* 5:133.
 73. Mūsā b. Aḥmad al-Hijjāwī, *al-Iqnā‘ fī Fiqh al-Imām Aḥmad b. Ḥanbal*, 4 vols., ed. M. Subkī (Cairo, 1351/1932), vol. 1, p. 233.
 74. Ibn al-Šiddīq, *Iḥyā’*, p. 9. Compare Aḥmad b. Muḥammad al-Ṭāḥāwī, *Sharḥ Ma‘ānī l-Āthār*, 3 vols., ed. M. S. Jād al-Ḥaqq (Cairo 1387/1968), vol. 1, p. 516, note 3.
 75. Shāfi‘ī, *al-Umm* 1:277; ‘Abd al-Raḥmān al-Jazīrī, *Kitāb al-Fiqh ‘alā l-Madhāhib al-Arba‘a*, 5 vols. (Beirut, ca. 1981), vol. 1, p. 536; al-Sarakhsī in his *Kitāb al-Mabsūt fī l-Furū‘* (GAS 1:460 f.), quoted in Ibn al-Šiddīq, *Iḥyā’*, p. 16, and Ibn Muflīḥ, *Furū‘* quoted in Ibn al-Šiddīq, *Iḥyā’*, p. 10.
 76. Ibn al-Šiddīq, *Iḥyā’*, p. 15.
 77. Ibn Muflīḥ, *Furū‘* 2:272, is referring to Ibn Ḥanbal.
 78. Shāfi‘ī, *al-Umm* 1:277, al Nawawī, *Majmū‘* 5:296; Sarakhsī in the *K. al-Mabsūt* “and many other jurists of the *Ḥanafīyya*” (Ibn al-Šiddīq, *Iḥyā’*, p. 16). Ibn Qudāma, *Mughnī* 2:507; Ibn Muflīḥ, *Furū‘* 2:272, rejects funerary buildings because of their “similarity to buildings of this world”; so does the Imamite theologian al-Hillī (d. 1325) at ‘Āmilī, *Wasā’il* 4:91.
 79. Shāfi‘ī, *al-Umm* 1:277. Possibly two versions of the beginning of that passage exist. The editor of Ṭāḥāwī’s *Sharḥ Ma‘ānī l-Āthār*, M. S. Jād al-Ḥaqq, quotes (vol. 1, p. 516, n. 3) the same passage from the *K. al-Umm* in the following way: “*qāla al-Shāfi‘ī ra’aitu umarā’a zamānī yahdamūna mā banā l-nāsu mina l-qibābi ‘alā l-maqābiri wa-mā ra’aitu aḥadan mina l-fuqahā’i ankara ‘alaihim*.” An edition of the text with these emendations is unknown to me.
 80. Nawawī, *Majmū‘* 5:298.
 81. Ibn Muflīḥ, *Furū‘* 2:272.
 82. Abū l-Ḥasan ‘Alī al-Shābushtī, *Kitāb al-Diyārāt*, ed. J. ‘Awwād (Baghdad 1366/1866), p. 299.
 83. Ibn Muflīḥ, *Furū‘* 2:272; Yaḥyā b. Sharaf al-Nawawī, *Minḥāj al-Ṭālibīn* (Cairo, 1325 H), p. 25.
 84. Nawawī, *Majmū‘* 5:298.
 85. Jazīrī, *al-Fiqh* 1:536. He takes as an example the Qarāfa of Cairo which was allegedly endowed by the caliph ‘Umar for the burial of Muslims. Compare Muḥammad b. al-Ḥājj, *al-Madkhal*, 4 vols. (Cairo, 1380/1960), vol. 1, p. 246.
 86. Jazīrī, *al-Fiqh* 1:536; Hijjāwī, *al-Iqnā‘* 1:233.
 87. Ibn al-Šiddīq, *Iḥyā’*, p. 6.